

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.**

FIRST APPEAL NO.550 OF 1998.

Smt.Lata Rajendra Kankariya

and ors. : Appellants.

versus

The Union of India & ors. : Respondents.

Mr.P.B.Shah for the appellants.

Mr.M.S.Karnik with Mr.S.K.Rajeshirke for
Respondent No.1.

Mr.T.N.Subramanyam with Smt.Aparna Shinde for
Respondent No.4.

CORAM : D.G.DESHPANDE, J.

DATED : 20th APRIL 2005.

JUDGMENT

1. This appeal is filed by the original plaintiffs against the judgment and decree dated 17/4/1997 passed by the III Jt. Civil Judge, Sr.Division, Pune by which her suit was dismissed. The case of the plaintiffs was as

under :-

2. Rajendra Kankariya was the husband of Plaintiff No.1 and the father of other plaintiffs. He was travelling on a scooter on Bombay Pune road on 10.6.1994. Some Jawans of Military fired shots from their guns as a result of which Rajendra died. This suit was, therefore, filed for compensation of Rs.Ten lacs from the respondents/defendants. It is further case of the plaintiff that after this incident some of the officers of the defendants/respondents approached her; they offered her condolence and paid Rs.9000/- by way of partial compensation with promise that they will be paid more compensation. The plaintiff No.1, being a widow, relied upon their assurances wrote letters, but no compensation at all came to be given. At the time of death, Rajendra was 28 years of age. He was serving in Bombay Manufacturing Company and was drawing an amount of Rs.1500/- per month, he was also doing part time job from which he was getting Rs.1000/- per month. Before filing the suit, the plaintiffs gave a notice under Section 80 of the Civil Procedure Code, but no amends were made and hence

this suit came to be filed.

3. Defendant No.3 i.e. Commandant-in Chief, southern command, filed written statement denying the knowledge about the incident dated 10.6.94; denying about any agitations going on in Punjab i.e. Operation Blue Star; denying that deceased Rajendra was travelling from Chinchwad to Pune on that day and at that time and; also denying that Rajendra died by the bullet injuries; further denying that for want of knowledge whether the death of Rajendra was caused due to the negligence of defendants. Income of the Rajendra was also denied. In the specific case put forth by the defendant No.3 in the written statement, they contended that the names of the Jawans, who fired at Rajendra, were not given by the plaintiffs, nor any particulars about regiments to which they belong. Then it was submitted that all the military persons including Jawans are bound by the rules and regulations and they must act or do their duties as per those rules and regulations laid down by the Union of India and even if it is accepted that there was some firing by some Jawans from Shikhs Regiments, that was

beyond the scope of their employment. It was an unauthorised and illegal act, in breach of rules and regulations and without permission of the defendants and, therefore, the question of giving compensation to the plaintiffs could not arise.

4. Further without prejudice to the aforesaid contentions, defendant No.3 also contended that after the so called incident, M.K.Kankariya, i.e. the father of deceased Rajendra, approached to the authorities of Union of India for compensation; that representation was filed by father-in-law along with plaintiff; it was accepted by the Union of India and, then gas agency was allowed in the name of M.K.Kankariya in 1987 and, therefore, according to the defendants, the plaintiffs are fully compensated and, no question of further compensation could arise.

5. In the background of aforesaid pleadings, the trial Court framed following Issues :-

ISSUES :-

1. Do plaintiffs prove that late Rajendra

M.Kankriya expired due to Bullate injuries fired by Jawans from Sikh Regiments of the Defence Department, Union of India on 10-6-1984?

2. Do Plaintiffs prove that late Rajendra Kankriya was not at fault and his death is caused to due to fire of Jawans who were under the control of deft.No.3 and in service of defendant no.1 and 2 while travelling by military vehicles?
3. Do plaintiff prove that the official of the defendant promise the plff. to pay compensation by way of money?
4. Do plaintiffs prove that they sustained loss sum of Rs.10 lacs on account of death of late Rajendra M. Kankriya?
5. Do plaintiffs prove that they are entitled to claim and receive the compensation of Rs.10 lacs or to what extent?
6. Do defendants prove that the suit is

liable to be dismissed for want of necessary parties?

7. Do defendants prove that they have paid appropriate compensation to the plaintiffs on account death of Rajendra?

6. The trial court, it appears, dismissed the suit on technical grounds. The first ground was that those jawans, who fired the shots, were not made parties though necessary and, even though from the police papers the names of jawans were brought on record, the plaintiffs did not care to implead those jawans. Further, according to the trial Court, after the plaintiff's evidence was over, the defendants produced all the proceedings before the Court Martial, but then also the plaintiffs did not implead the jawans and, therefore, the court came to the conclusion that in the absence of necessary parties, the suit was liable to be dismissed. This was in response to Issue No.6.

. However, the Court also considered the other Issues viz. Issue Nos. 1 and 2 and came to the conclusion that the persons, who, on that

day, fired the random shots and caused death of Rajendra, were the persons from military and, they were the employees of the defendants/respondents. Regarding the death of Rajendra due to bullet injuries, the Court, also gave a positive finding. However, regarding liability, the Court held, on the basis of some judgments of the Higher Court that the acts of the jawans were not in exercise of the powers delegated to the public servants in discharge of the statutory function. The Court also held that those jawans were punished for mutiny under sections 36 and 37 of the Indian Army Act and they had not done this act under the direction of their superior officers and they were not on official duty. Then Court came to the conclusion that the gas agency was given to the father of deceased Rajendra by way of sympathy and that sympathy cannot be converted into legal liability of paying compensation. The court, however, concluded that the damages of Rs.Ten lacs claimed cannot be said to be excessive in this case, but ultimately dismissed the suit for all the aforesaid reasons and hence this appeal.

7. I heard advocate for the appellants and, the

advocates for the respective respondents at length. Mr. Shah, appearing for the appellants, contended that the finding of the Court regarding maintainability of the suit for not joining the jawans is totally perverse, so also the finding of the Court that the jawans had not done that acts in the discharge of their duties and, according to him, therefore, if Rajendra was killed by Jawans, the plaintiffs/appellants were entitled for compensation.

8. Mr. Karnik made similar submissions as made before the trial Court i.e. jawans were not supposed to open the fire in public; they were not discharged their duties, though they were punished for mutiny in the Court Martial and, therefore, their acts do not bind the respondents. He also placed reliance upon the judgment of the Supreme Court reported in **AIR 1966 SC 1697 [Sitaram Motilal Kalal v. Santanuprasad Jaishanker Bhatt]**. It was a matter arising out of tort and it was held that a master is vicariously liable for the acts of his servant acting in the course of his employment and, for the master's liability to arise, the act must be a wrongful act authorised by the master or a

wrongful and unauthorised mode of doing some act authorised by the master.

. The aforesaid judgment does not apply to the facts of this case. The most important thing that goes against the defendants/respondents is that after the death of Rajendra, they have given gas agency as compensation to the father-in-law. In spite of my specific question, the counsel for the defendants/respondents could not point out any documents wherein the plaintiff has agreed that her father-in-law be given gas agency on behalf of herself and her minor sons. Giving gas agency, therefore, by the respondents to the father-in-law of the plaintiff/appellant or father of deceased Rajendra clearly shows that the defendants/respondents had admitted their liability in this matter. Giving gas agency in compensation is giving more than Rs.Ten lakhs in cash, because it is a permanent source of income and valuable assets.

. Therefore, if by giving gas agency as compensation, the defendants/respondents have accepted their liability, then there is no reason why this poor widow and her three children who

were most immediate victims of a pitiable and sorrowful life after the death of Rajendra should have been deprived of the reasonable compensation in this regard. It is true that in the suit filed, the plaintiffs have not joined father-in-law. That could not be for two reasons. Either the plaintiff wanted to make independent claim for compensation or the plaintiff failed to join her father-in-law for claiming any share in the gas agency.

9. From the submissions made by Mr. Shah for the appellants it is clear that the father-in-law had not paid any single farthing to the present appellants, who, under the Hindu Succession Act, were the legal heirs of deceased Rajendra. In fact under the Hindu Succession Act, it is not the father, but it is the mother along with widow and children of deceased Rajendra were entitled for compensation. Therefore, the plaintiffs had two options, either to claim full share or some share in the gas agency of father-in-law, or to claim compensation separately. It appears that she had chose second option. In any case the facts remain that the claim of the plaintiffs has to be considered now independently unless the

defendants/respondents can compel the father-in-law to make the plaintiffs as joint owners of the gas agency. That exercise has not been done till today and, therefore, the plaintiffs' case will have to be considered independently.

10. Therefore, as observed by me earlier, this is a case where none of the submissions made by the defendants/respondents about escaping from liability in the matter can be considered and, if at all they are to be considered, they are required to be rejected. Because the defendants have, by giving gas agency to the father-in-law, accepted their liability. The plaintiffs cannot be deprived of similar benefits and reliefs. Therefore, the only question that comes to is, the quantum of compensation to which the plaintiffs are entitled.

11. In fact the plaintiffs could have filed a writ petition in the court in stead of filing the suit for getting compensation, in the circumstances, but that has not been done and the suit came to be filed.

12. The trial Court has come to the conclusion that in the circumstances of the case Rs.Ten lacs was not at all excessive. The suit of the plaintiffs is for Rs.Ten lacs only. Her husband died 10.6.1994. Eleven years have passed from that date and, the plaintiffs have not received a farthing from the respondents. At that time the plaintiff Nos.2, 3 and 4 were aged about 8 years, 6 years and 4 years respectively and, therefore, in the circumstances the appeal is required to be allowed. None of the reasons given by the trial Court are sustainable for the aforesaid reasons. Hence, the order :-

:ORDER:

The Appeal is allowed with costs.

The judgment and decree of the trial Court dismissing the suit of the plaintiffs is set aside.

Defendants/Respondents Nos. 1 to 3 to pay Rs.10,00,000/- [Rupees Ten lacs] to the plaintiffs with interest at the rate of 9% p.a. from the date of the suit

till realisation. Respondents Nos. 1 to 3 to pay or deposit that amount in the Court within eight weeks from today.

[D.G.DESHPANDE]

20/04/2005

JUDGE.